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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/325,599 06/03/99 DE GHELDERE

S. F8-5460

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EXAMINER

CINTINS, I

ART UNIT

PAPER NUMBER

1724

DATE MAILED:

01/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/325,599

Applicant(s)
De Gheldere et al.

Examiner
Ivars C. Cintins

Group Art Unit
1724



☒ Responsive to communication(s) filed on Oct 10, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213:

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-23 is/are pending in the application.

Of the above, claim(s) 12-23 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-11 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4 and 7-9

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Applicant's election with traverse of Group I, claims 1-11, in Paper No. 11 is acknowledged. The traversal is on the grounds that the subject matter of Group I is sufficiently related to the subject matter of Group II to allow for examination of all the claims together, because claim 1 is directed to a disposable fluid processing set "for treating a biological fluid." This is not found persuasive because the intended use of a device (i.e. for treating a biological fluid) is not a structural limitation, and hence cannot be given weight in determining patentability of apparatus claims. It is pointed out that since the apparatus of Group I could be used to carry out another process different from that of Group II, as explained in the previous Office action (see also page 6, lines 11-13, of the specification), restriction between these two inventions is deemed to be proper. The requirement is still deemed proper and is therefore made **FINAL**. Claims 12-23 are withdrawn from further consideration, as being directed to a non-elected invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 5 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The term "said markable tabs" (claim 5, line 2) lacks antecedent basis in the claims, and is therefore indefinite.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bischof (U.S. Patent No. 5,536,238). The reference discloses a fluid processing set comprising first (14) and second (16) containers connected by tubing (62, 58, 66), and a holder (10) which separates the first and second containers from one another during a processing step; and this is all that is required by claim 1. Also, holder 10 comprises a chamber having a bottom wall, side walls, a rear wall and a slot for receiving tubing; and this is all that is further required by claims 2 and 6. Furthermore, peristaltic pump (66 of Fig. 1) is deemed to be structurally and patentably indistinguishable from

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the broadly recited "indicator" of claims 7 and 8. Moreover, connectors 60 and 64 of this reference device are easily separated from one another; and this is all that is additionally required by claim 9. Finally, since there is inherently some empty space in the reference system, which empty space is capable of containing air; ~~this reference is deemed to satisfy the~~ requirements of claim 10.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3-5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bischof in view of Oka et al (U.S. Patent No. 5,298,165). The primary reference discloses the claimed invention with the exception of the recited adsorbent material (claims 3 and 11), and the markable indicia (claims 4 and 5). Oka et al teaches removing white blood cells (i.e. leukocytes) from a biological fluid with an adsorbent material (see col. 6, line 31). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the

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adsorbent material of the secondary reference for the filter of the primary reference, since this secondary reference adsorbent material is capable of removing white blood cells from a biological fluid in substantially the same manner as the filter of the primary reference (see col. 4, line 22 of Bischof), to produce substantially the same results. Also, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of the thus modified primary reference with conventional markable tabs, in order to label the biological fluids undergoing treatment in this modified primary reference system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

The fax phone numbers for this art unit are: (703) 305-3599 for "Official" faxes after Final Rejection; (703) 305-7718 for all other "Official" faxes; and (703) 305-3602 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Ivars Cintins
Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
January 1, 2001